IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6079 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARJIVAN LAVJIBHAI PATADIA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1 - 2.
MR DHIRENDRA MEHTA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 12th January 1990 in Revision Application SRD No. 16/1988 in dismissing the same and confirming the

order passed by the Collector, Rajkot dated 16th June 1988 in Land Appeal No. 4/1988 in dismissing the same and confirming the order passed by the Deputy Collector, Morvi, dated 8th March 1988 in not only quashing and setting aside the Entry No. 1603 with respect to the land in question but also directing the petitioner to be removed from the land in question.

2. The land bearing Survey No. 183/1 admeasuring 5 acres was owned by one Shersiya Rahim Hayat Hasan Mumna and the same came to be purchased by the petitioner by registered Sale Deed No. 6820 dated 6.2.1981 and the name of the petitioner was mutated in the Revenue record vide Entry No. 1603 which came to be certified by the Mamlatdar, Wankaner on 31st March 1982. The Deputy Collector, Morvi by order dated 8th March 1988 not only set aside the aforesaid Entry No. 1603 on the ground that the same is in breach of the provisions of Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 [“hereinafter referred to as “Gharkhed Ordinance”] but also directed the petitioner to be removed from the land in question under Section 54 of the Gharkhed Ordinance. Being aggrieved and dissatisfied with the said order of the Deputy Collector, dated 8th March 1988, the petitioner preferred appeal before the Collector, Rajkot, being Land Appeal No. 4/1988 and the Collector, Rajkot dismissed the said appeal confirming the order passed

by the Deputy Collector, Morvi. Being aggrieved and dissatisfied with the order passed by the Collector, Rajkot dated 16th June 1988 in Land appeal No. 4/1988 the petitioner preferred revision application before the State Government, i.e., Additional Chief Secretary (Appeals), Revenue Department, being Revision Application SRD No. 16/88 and the Additional Chief Secretary (Appeals), Revenue Department, by order dated 12th January 1990 in Revision Application SRD No. 16/88 the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri PV Hathi, learned advocate appearing on behalf of the petitioner has vehemently submitted that apart from the fact that the Assistant Collector was not the Collector having authority to initiate proceedings for breach of Section 54 of the Gharkhed Ordinance and to vacate the petitioner, the proceedings were initiated by the Assistant Collector for cancellation of Entry No. 1603 only and no notice was issued under Section 75 of the said Ordinance; that in RTS proceedings taking the Revenue Entry in suo motu revision the Deputy Collector/Assistant Collector passed an order to vacate the petitioner from the land in question which is not permissible and the same is in breach of principles of natural justice; that the same could not have been confirmed by the Collector followed by the Additional Chief Secretary; and therefore it is requested to allow the

present Special Civil Application on this short ground alone.

4. Shri MR Mengdey, learned AGP, though tried to support the order passed by all the 3 authorities below, is not in position to satisfy this Court whether in fact any notice was issued by the Assistant Collector/Deputy Collector for breach of Section 54 of the Gharkhed Ordinance or not and also whether any notice was issued upon the petitioner to show cause why the sale transaction in favour of the petitioner should not be declared invalid and in breach of Section 55 of the Gharkhed Ordinance or not.

5. On going through the order passed by all the authorities below, more particularly the Deputy Collector, it appears that proceedings were initiated by the Deputy Collector taking the Entry No. 1603 under suo motu revision, and there was no notice issued calling upon the petitioner to show cause why the sale transaction in favour of the petitioner should not be declared as invalid and illegal and in breach of Section 54 of the Gharkhed Ordinance. Under the circumstances, the order passed by the Deputy Collector holding the sale in favour of the petitioner in breach of Section 54 of the Gharkhed Ordinance and directing the petitioner to vacate from the land in question is in breach of principles of natural justice and the same cannot be sustained.

Consequently, the order passed by the Collector, Rajkot, as well as the order passed by the Additional Chief Secretary (Appeals), confirming the order passed by the Deputy Collector cannot be sustained and the same are required to be quashed and set aside.

6. For the reasons stated above, the petition succeeds. The order passed by the Additional Chief Secretary (Appeals) dated 12th January 1990 in Revision Application SRD No. 16/1988; the order passed by the Collector, Rajkot, dated 16th June 1988 in Land Appeal No. 4/1988; as well as the order passed by the Deputy Collector, Morbi dated 8th March 1988 are hereby quashed and set aside. However, it will be open for the appropriate authority under the provisions of Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 to initiate appropriate proceedings for breach of Section 54 of the said Ordinance with regard to the sale transaction in question which is in favour of the petitioner if permissible under the law. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.